No. 1386

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

E. W. ANDERSON,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District Court for the District of Alaska, Second Division.

FILMER BROS. CO. PRINT, 1642 HOWARD STREET, S. F.

No. 1386

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

E. W. ANDERSON,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States District Court for the District of Alaska, Second Division.

FILMER BROS. CO. PRINT, 1642 HOWARD STREET, S. F.

INDEX.

District Court for the District of Alaska, Division No. Two.

UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSON, E. ANDERSON, JOHN LARSEN, FRANK GREEN, and JOHN DOE and RICHARD ROE, Whose True Names are to the Grand Jury Unknown.

Indictment.

John Chistensen, E. Anderson, John Larsen, Frank Green and John Doe and Richard Roe, whose true names are to the grand jury unknown, are accused by the grand jury of the District of Alaska, Division No. Two, by this indictment of the crime of riot committed as follows: The said John Christensen, E. Anderson, John Larsen, Frank Green, and John Doe and Richard Roe, whose true names are to the grand jury unknown, on the 13th day of August, A. D. 1905, in the District aforesaid, did wrongfully, unlawfully and feloniously acting together and without authority of law, with force and violence make an assault upon John Rigby, Fred Thorpe, Horace Bell, O. L. Green, Scott Burgess and John Bustrom, and having the immediate power of execution so to do did threaten to assault with force and violence the said John Rigby, Fred Thorpe, Hor-

ace Bell, O. L. Green, Scott Burgess and John Bustrom, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Dated at Nome in the District aforesaid, the 28th day of September, nineteen hundred and five.

JNO. J. REAGAN,
Actg. U. S. Attorney.

Witnesses examined before the grand jury:

JOHN RIGBY.
FRED THORPE.
HORACE BELL.
O. L. GREEN.
SCOTT BURGESS.

[Endorsed]: Original. No. 426-Crim. District Court, United States, District of Alaska, Second Division. The United States vs. John Christensen, E. Anderson, John Larsen, Frank Green, and John Doe and Richard Roe, Whose True Names are to the Grand Jury Unknown. Indictment. A True Bill. E. B. Fulton, Foreman. Filed A. D. 1905. ————, Clerk. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Sep. 30, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. Jno. J. Reagan, Actg. U. S. Attorney. Recorded Vol. 2, Indictments, p. 64. McB.

In the United States District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSEN, E. ANLERSON, JOHN LARSEN, FRANK GREEN, and JOHN DOE and RICHARD ROE, Whose True Names are to the Grand Jury Unknown,

Defendants.

Motion to Set Aside Indictment.

Defendants move the Court to set aside the indictment upon the following grounds:

1. Said indictment is not found, indorsed and presented as prescribed in chapter six of Title Two of the Criminal Code of Alaska, in this, to wit:

It is not signed by the "District Attorney" of said District or Division, or any of his deputies, as such, but is signed "Jno. J. Reagan, Actg. U. S. Attorney."

It is not endorsed "A true bill," and such endorsement signed by the foreman of the grand jury.

GEO. D. SCHOFIELD,
Atty. for Appearing Defendants.

Service by true copy hereof accepted Oct. 3, 1905.

G. B. GRIGSBY,
Deputy U. S. Dist. Atty.

[Endorsed]: No. 426-Cr. In U. S. Dist. Ct., Alaska, 2d Div. United States vs. John Christensen et al. Motion. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Oct. 3, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. Geo. D. Schofield, Atty. for Defts.

In the District Court in and for the District of Alaska, Second Division.

Term Minutes, Special September, 1905, Term Begun and Held at the Town of Nome in said District and Division, Sept. 25, 1905.

Tuesday, Oct. 3, 1905, at 9:30 A. M.

Court convened pursuant to adjournment.

Present: Hon. ALFRED S. MOORE, Judge.
John H. Dunn, Clerk.
Angus McBride, Deputy Clerk.
J. J. Reagan, Acting U. S. Attorney.
Thos. C. Powell, U. S. Marshal.

Now, upon the convening of Court the following proceedings were had:

No. 426-C.

UNITED STATES

vs.

CHRISTENSEN et al.

Order Overruling Motion to Set Aside Indictment.

Geo. D. Schofield, attorney for defendant, presented a motion to set aside the indictment, which motion was argued and overruled by the Court.

Defendants' counsel thereafter presented and argued a demurrer to the indictment, which demurrer was taken under advisement by the Court, authorities to be submitted by counsel.

All witnesses in this case were excused until 2 P. M.

(All jurors not engaged in the trial of this case were excused until 2 P. M.)

* * * * * * * *

In United States District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSEN, E. ANDERSON, JOHN LARSEN, FRANK GREEN and JOHN DOE and RICHARD ROE, Whose True Names are to the Grand Jury Unknown,

Defendants.

Demurrer to Indictment.

Defendants demur to the indictment returned herein upon the following grounds:

1. Said indictment does not substantially conform to the requirements of chapter seven of title two of the Criminal Code of Alaska, in this, to wit:

(a) It is not signed by the "District Attorney," or any of his deputies, as such, but is signed "Jno. J. Reagan, Actg. U. S. Attorney."

(b) It is not endorsed "A true bill," and such endorsement signed by the foreman of the grand jury.

(c) It does not contain a statement of facts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

(d) It is not direct and certain as regards the crime charged, in that it alleges that the offense was committed by an assault and was committed by threatening to assault.

(e) It does not contain the particular circumstances of the crime charged, and such circumstances are necessary to constitute a complete crime.

2. The facts stated in the indictment do not constitute a crime, said facts therein pleaded being legal conclusions only.

GEO. D. SCHOFIELD,
Atty. For Appearing Defts.

Service by true copy hereof accepted Oct. 3, 1905.

G. B. GRIGSBY,
Deputy U. S. District Attorney.

[Endorsed]: No. 426-Crim. In U. S. Dist. Ct. Alaska, 2d Div. United States vs. John Christensen et al. Demurrer. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division at Nome. Oct. 3, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. Geo. D. Schofield, Atty. for Dfts.—McB.

* * * * * * * *

Minutes, Oct. 3, 1905 (Continued).

2 P. M.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

CHRISTENSEN et al.

Order Fixing Time of Trial.

The Court rendered a decision overruling the demurrer to the indictment heretofore submitted, to which an exception was taken and allowed to the defendant.

The defendants John Christensen, E. Anderson, John Larsen and Frank Green appeared in open court in person and by their attorney, Geo. D. Schofield, each defendant personally waiving the reading of the indictment and on being arraigned were each handed a copy of the indictment, and each defend-

ant on being asked to plead answered in person that they pleaded not guilty.

Counsel for defendants then on behalf of the defendants asked for a separate trial.

The case was then set for trial for Friday next at 10 A. M., subject to motion for continuance by defendants, the case of U. S. vs. Christensen to be tried first.

* * * * * * * *

Minutes, Oct. 16, 1906.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. E. ANDERSON.

Trial.

This case came regularly on for trial before the Court and a jury, Geo. D. Schofield appearing for the defendant, and Asst. U. S. Attorney Geo. B. Grigsby and J. J. Reagan for the United States. The names of the jurors in the box became exhausted, no jurors being chosen. The Court directed a venire to issue to the United States Marshal for thirty persons qualified to serve as petit jurors returnable at 3:40 P. M.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. E. ANDERSON.

Trial (Continued).

The venire heretofore issued for thirty persons was returned served upon the following named persons: J. J. McKay, Archie Graham, W. A. Sternberg, Jos. Sliscovitch, L. R. Morris, A. J. Wissner, E. P. Meyer, Jas. O'Sullivan, F. J. Grimm, W. H. Black, P. H. Watt, J. A. S. Robertson, A. Clayborne, P. B. McLeod, Dave Davidson, Albert Wilson, Geo. H. Webber, O. W. Carlson, Jafet Lindeberg, Jacob Chrisman, L. H. French, Al. Guinan, D. W. McKay, T. T. Lane, P. L. Baldwin, J. Mac Smith, F. O. Hanks, Chas. Kruse, H. L. Stokes and C. D. Dean.

All of the above-named persons answered present at roll-call except Jas. O'Sullivan, who was excused by the Court for the reason that he is not a citizen of the United States, and Jafet Lindeberg, who was excused for the reason that he is at present acting as a Deputy U. S. Marshal.

Thereafter the names of the jurors of the regular panel whose names were not placed in the box at the beginning of this trial, for the reason that they were serving in the case of the U. S. vs. Hickey, were

now placed in the jury-box by the Clerk and the impaneling of the jury proceeded with until the said names of the regular venire were exhausted. Thereafter the names of the special veniremen were placed in the jury-box by the clerk, and a jury was then completed and sworn to try the case as follows: M. E. Kerr, C. H. Leedy, B. R. Holden, C. D. Dean, J. J. McKay, H. L. Stokes, J. Mac Smith, A. J. Wisner, Jos. Sliscovitch, Archie Graham, Albert Wilson and Chas. Kruse.

After the jury had been sworn and admonished by the Court an adjournment was taken until 8 P. M.

* * * * * * * *

Minutes, October 17, 1906 (Continued).

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Trial (Continued).

Roll-call of jurors and trial resumed.

The case was stated for the prosecution by Geo. B. Grigsby and for the defendant by Geo. D. Schofield.

Thereafter counsel for the defendant asked for written instructions, and also that all witnesses be excluded from the courtroom during the taking of

the testimony. Granted by the Court and witnesses excluded.

Witnesses for the prosecution were sworn as follows: John Rigby, Horace Bell, Scott Burgess and Fred Thorpe.

* * * * * * * *

2 P. M.

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Trial (Continued).

Roll-call of jurors and trial resumed, Fred Thorpe on the witness-stand. Thereafter the plaintiff rested, and witnesses were sworn and examined for the defense as follows:

R. B. Milroy, James Ekdahl, E. J. Hickey and Carl Ment. Thereafter E. J. Hickey was recalled and C. J. McKay, Jack McCarty, Chas. Baird and E. Anderson, the defendant, were sworn and examined.

A card of membership of the defendant in the Federal Labor Union was admitted in evidence and the defendant recalled by the prosecution for further cross-examination. Thereafter the defense rested and John Rigby recalled and E. W. Johnson and Oscar Green sworn and examined in rebuttal.

Thereafter the jury was admonished and an adjournment taken until 10 A. M., Oct. 18, 1905.

Minutes, Oct. 18, 1906.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Trial (Continued).

Roll-call of jurors and trial resumed. J. F. Warren and W. M. Eddy were sworn by the prosecution in rebuttal. After examination the prosecution rested and the testimony closed. Thereafter the case was argued to the jury by Asst. U. S. Attorneys John J. Reagan and Geo. B. Grigsby and for the defense by Geo. D. Schofield.

The Court thereupon delivered to the jury a written charge, exceptions to which were taken in the presence of the jury, after which the jury retired in charge of bailiffs Lawrence and Mitchell, who were first duly sworn.

Court then adjourned until 2 P. M.

In the United States District Court for the District of Alaska, Second Division.

No. 426-Crim.

THE UNITED STATES OF AMERICA

vs.

E. ANDERSON.

Instructions to the Jury.

Gentlemen of the Jury:

The defendant, E. Anderson, is indicted with three others upon the charge of riot. The indictment charges a violation by the defendant of section III, Part I, of the Criminal Code, and defines the crime of riot in these words:

"That any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together and without authority of law is riot."

The indictment accuses the defendant, E. Anderson, now on his trial, John Christensen, John Larsen, Frank Green, and two others whose names are to the grand jury unknown as follows:

That they on the 13th day of August, 1905, in the District of Alaska, unlawfully, wrongfully, and feloniously acting together and without authority of law, with force and violence, did make an assault upon John Rigby, Fred Thorpe, Horace Bell, O. L.

Green, Scott Burgess, and John Bustrom, and having the immediate power so to do, did threaten to assault with force and violence the said John Rigby, Fred Thorpe, Horace Bell, O. L. Green, Scott Burgess, and John Bustrom, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(2)

Now, I instruct you, that the use of force and violence unaccompanied by threats to use force and violence, if made and committed by three or more persons acting together, and without authority of law, will constitute the crime of riot under the section quoted.

(3)

The indictment charges the commission of an assault as an element of the one form of the crime of riot charged in the indictment. An assault is defined as an attempt to apply any, even the least, actual force or violence to the person of another directly or indirectly, without the consent of the other person. An assault may be committed by the using of gestures, with or without threatening words, towards another, giving him reasonable ground to believe that the person using the gestures meant to apply such actual force to his person against his consent or will. So also, is an assault committed when a person, not under lawful arrest, without his consent

is deprived of his liberty to go or come or act according to the dictates of his own will.

(4)

The allegations of the indictment which the Government must prove in order to warrant you in rendering a verdict of guilty against the defendant, are:

1. That within three years next preceding September 30, 1905, and within the District of Alaska, the defendant E. Anderson, was acting together with any two or more of the other defendants, named or unnamed, and without authority of law.

2. That so acting together with any two or more of said defendants and without authority of law, the defendant at the time and place mentioned above made an assault with force and violence, or aided and abetted by his presence or by his words or gesture, an assault to be made with force and violence, upon any one or more of the following persons, to wit: John Rigby, Fred Thorpe, Horace Bell, O. L. Green, Scott Burgess, and John Bustrom.

If all the evidence adduced at the trial convinces you beyond a reasonable doubt of the truth of these allegations, it will then be your duty to render a verdict of guilty. On the other hand, if the evidence fails to so convince you, your duty will be to return a verdict of not guilty.

(5)

You are the judges of the effect and value of all

evidence addressed to you. In this connection, however, you are instructed that your power of judging the effect and value of evidence is not arbitrary, but is to be exercised by you with legal discretion and in subordination to the rules of evidence.

(6)

There are certain rules of evidence which it is made the duty of the Court to give you upon all proper occasions and these will now be defined to you:

You are not bound to find in conformity with the declarations of any number of witnesses, which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds.

That a witness willfully false in one part of his testimony may be distrusted by you in others; and if you believe that any witness in this case has willfully testified falsely, you are at liberty to disregard his entire testimony, except in so far as it may be corroborated by other facts and circumstances proved on the trial.

(7)

In determining the value to be given to the testimony of any one witness, you should take into consideration the interest, if any, he has in the event of the trial; the opportunities he has had to know the facts and circumstances to which he testifies;

and without authority of law was present at the place and time named in the indictment and aided and abetted by his presence, his words, gestures, or otherwise, the others then and there present to employ force and violence on Rigby or on any of the persons named in the indictment.

(12)

Gentlemen of the jury, the defendant in this case has seen fit to go upon the stand as a witness in his own behalf. Now, you are instructed that under the law he is a competent witness and his testimony is to be weighed and considered in the manner you will weigh and consider the testimony of any other witness, exercising your judgments as reasonable men and keeping in mind these instructions bearing upon the proper manner of treating evidence and giving to it its due and just effect.

(13)

I hand you two forms of verdict, drawn in compliance with the law: One finds the defendant guilty as charged in the indictment, the other finds him not guilty thereof.

When you will have retired to your jury-room and shall have agreed upon your verdict, you will cause your foreman to sign the one in which you unanimously concur and return the same into Court as your verdict in the case.

You will be permitted to take with you the indictment and these instructions.

You may now retire to deliberate upon your verdict.

Let the bailiffs be sworn to keep charge of the jury.

Nome, Alaska, October 18, 1905.

ALFRED S. MOORE,
Dist. Judge.

[Endorsed]: 426-Crim. U. S. Dist. Court, Dist. of Alaska, Second Division. United States of America vs. E. Anderson. Instructions to Jury. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Oct. 20, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. McB.

Minutes Oct. 20, 1906.

2 P. M.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Trial (Continued).

..At 2:30 P. M. the jury out considering this case came into open court, answered to their names at roll-call, and rendered the following verdict, the defendant being present in court, together with his counsel, Geo. D. Schofield:

"In the District Court, in and for the District of Alaska, Second Division.

THE UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSEN, E. ANDERSON et al.

We, the jury in the above-entitled case, duly impaneled and sworn, find the defendant, E. Anderson, guilty as charged in the indictment.

J. J. McKAY,
Foreman.

Under all the circumstances we earnestly ask that mercy be given the prisoner."

Upon motion of counsel for defendant the jury was polled and each and every juror answered that the verdict as signed by the foreman and returned into court was his verdict.

Thereupon the verdict was filed and the jury discharged from further consideration of the case.

Upon motion of Asst. U. S. Attorney the Court fixed a bond in the sum of four thousand dollars and remanded the prisoner to the custody of the marshal.

In the District Court in and for the District of Alaska, Second Division.

THE UNITED STATES OF AMERICA.

vs.

JOHN CHRISTENSEN, E. ANDERSON et al.

Verdict.

We, the jury in the above-entitled case, duly impaneled and sworn, find the defendant, E. Anderson, guilty as charged in the indictment.

J. J. McKAY,
Foreman.

Under all the circumstances we earnestly ask that mercy be given the prisoner.

[Endorsed]: No. 426-Crim. U. S. Dist. Court, Dist. of Alaska, Second Division. United States of America vs. E. Anderson. Verdict. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Oct. 20, 1905, Jno. H. Dunn, Clerk. By ————, Deputy. McB.

In United States District Court, for the District of Alaska, Second Division.

UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSEN, E. ANDERSON et al.

Defendants.

Motion for New Trial.

Defendant E. Anderson moves the Court to set aside the verdict returned herein and grant a new trial unto defendant E. Anderson, upon the following grounds:

1. Insufficiency of the evidence to justify the verdict, among other things, to wit, the identity of defendant Anderson was not proven while his alibi was clearly proven.

2. Error in law occurring at the trial and excepted to by the defendant, among other errors, to wit:

(a) Failure to excuse two jurors on their voir dire examination when each had testified that he had a fixed opinion as to the guilt or innocence of defendant that would require the testimony of more than one witness to remove and that he did not believe he would be a fair and impartial juror, over defendant's challenge for bias, thereby compelling defendant to exhaust two peremptory challenges to excuse each of

said jurors and further thereby compelling defendant to exhaust his ten peremptory challenges.

(b) The refusal of the Court to give defendant's instruction No. 1 defining the defense of "alibi."

(c) Refusal of the Court to give defendant's instruction No. 3 with reference to convicting upon suspicion.

(d) In giving the Court's instruction No. —— as to the measure or amount of proof required to establish an "alibi."

(e) In permitting Government's witnesses to testify to the fact that defendant had been out to steamship "Tampico" on several occasions prior to the night of the alleged riot, the same not being a part of the res gestae.

(f) In receiving and rejecting testimony during the progress of the trial, over defendant's objections.

GEO. D. SCHOFIELD,
Attorney for Defendant Anderson.

Service by receipt of a true copy hereof accepted this 21st day of October, 1905.

HENRY M. HOYT,
U. S. District Attorney.
By JNO. J. REAGAN,
Asst. U. S. Atty.

[Endorsed]: No. 426-Cr. In U. S. Dist. Court, Alaska, 2d Div. United States vs. E. Anderson. Motion for New Trial. Filed in the Office of the

Clerk of the Dist. Court of Alaska, Second Division, at Nome. Oct. 21, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. Geo. D. Schofield, Atty. for Deft. McB.

Minutes of Court—Oct. 21, 1905.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Order Fixing Time for Hearing Motion for New Trial.

The Court stated that the motion for a new trial in this case must be argued on Monday next at 10 A. M., owing to the fact that navigation is about to close, and that this matter must be disposed of before that time.

Minutes of Court—Oct. 23, 1905.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Sentence.

The defendant, E. Anderson, was produced in open court in person and was represented by his counsel, Geo. D. Schofield. Upon being asked, the defendant stated that he had nothing to say why sentence should not be pronounced. Thereafter counsel spoke in favor of leniency of the Court in imposing sentence, and thereupon the Court sentenced the defendant to imprisonment in the United States Penitentiary at McNeill's Island, State of Washington, for the period of three years to be computed from noon to-day. The defendant was then remanded into the custody of the United States Marshal to carry this sentence into effect.

In the United States District Court, District of Alaska, Second Division.

No. 426-Criminal.

UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSEN, E. ANDERSON et al.

Judgment.

The above case having duly come on for trial and the plea of the defendant E. Anderson of not guilty to the crime of riot having been duly entered with the clerk of the above-entitled Court, and a jury having

been impaneled and sworn, and said defendant being personally present at all times throughout the proceedings, the jury having heard the evidence, argument and instructions of the Court and having retired for deliberation and rendered a verdict of guilty as charged in the indictment—

Now, on this 23d day of October, A. D. 1905, it is ordered, adjudged and decreed that the said E. Anderson be imprisoned in the United States Penitentiary at McNeill's Island in the State of Washington, for a period of three (3) years, to be computed from noon to-day, October 23, 1905, and the said E. Anderson is remanded to the custody of the United States Marshal for the Second Division of the District of Alaska, who is directed to execute the above sentence.

Done in open court this 23d day of October, A. D. 1905.

ALFRED S. MOORE,
U. S. District Judge, 2d Division, District of Alaska.

[Endorsed]: No. 426-Crim. U. S. Dist. Court, Alaska, Second Division. United States vs. E. Anderson, Judgment—E. Anderson. Filed in the Office of the Clerk of the Dist. Court, Alaska, Second Division, at Nome. Oct. 23, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. Recorded Vol. 3, Orders and Judgments, p. 596. C. McB.

In United States District Court, for the District of Alaska, Second Division.

UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSEN, E. ANDERSON et al.
Defendants.

Notice of Hearing.

To the United States of America, and to Henry M. Hoyt, United States District Attorney for the District of Alaska, Second Division:

You, and each of you, will please take notice that on Saturday, November 4th, 1905, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, at the courtroom of said court, in Nome, Alaska, the issue of law raised in the above-entitled action by defendant E. Anderson, on his separate trial, and subsequent proceedings, to wit, said defendant's motion for a new trial, duly filed in said cause, will be brought on for hearing and argument.

GEO. D. SCHOFIELD,
Attorney for Defendant Anderson.

Receipt of true copy hereof admitted this 2d day of November, 1905.

HENRY M. HOYT,
U. S. District Attorney.

[Endorsed]: No. 426-Crim. In U. S. Dist. Ct, Alaska, 2d Div. United States vs. E. Anderson. Notice of Hearing. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Nov. 2, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. L. Geo. D. Schofield, Atty. for Dft.

In United States District Court, for the District of Alaska, Second Division.

UNITED STATES OF AMERICA

vs.

JOHN CHRISTENSEN, E. ANDERSON et al.
Defendants.

Motion to Vacate Judgment and Sentence.

Defendant E. Anderson moves the Court to set aside the judgment of conviction and sentence imposed against him, the said defendant, herein on the 23d day of October, 1905, whereby he was senteneced to three years' imprisonment in the Penitentiary at McNeill's Island in the State of Washington, for the reason that said judgment of conviction and sentence imposed was prematurely made, entered and imposed, in this, to wit: defendant's motion for a new trial was pending, was not heard, argued, submitted, or passed upon by the Court at the time said judg-

ment of conviction and sentence was imposed, and said motion is still undetermined. This motion is based upon the records and files of this case, the minutes of the Court and the subjoined affidavit.

GEO. D. SCHOFIELD,
Atty. for Defendant Anderson.

United States of America,
District of Alaska,—ss.

Geo. D. Schofield, being first duly sworn, says, he is attorney for defendant Anderson herein; that said judgment of conviction and sentence was made, entered and imposed while there was pending a motion for a new trial duly made and filed by said defendant, which motion was not heard, argued, submitted or passed upon by the Court at the time said judgment of conviction and sentence was imposed, and which motion is still undetermined.

Affiant further says that judgment was rendered and sentence imposed herein by the Court without asking defendant or his counsel whether any reason existed why sentence should not be imposed, but that after imposing said sentence, the Court then asked defendant Anderson if he had anything to say why sentence should not be imposed, whereupon, said defendant, after the imposing of said sentence, said, "I've got something for nothing," and further affiant saith not.

GEO. D. SCHOFIELD.

the consistency or inconsistency of his testimony; the probability or lack of probability of the story told, together with his conduct and general demeanor on the witness-stand.

(8)

You are instructed, gentlemen, that the defendant is presumed by law to be innocent of the charge laid in the indictment, and that such presumption of innocence remains throughout the trial and until he is proved guilty beyond a reasonable doubt.

By reasonable doubt is not meant mere possible doubt or conceivable doubt. In considering this case you should not go beyond the evidence to hunt for doubts, nor should you entertain such doubts as are merely imaginary or based upon groundless conjecture or guess. A doubt to justify an acquittal must be reasonable and arise from a candid and impartial consideration of all the evidence in the case, and then it must be such a doubt as would cause a reasonable, prudent and considerate man to hesitate and pause before acting in the graver and more important affairs of life. If after a careful and impartial consideration of all the evidence in the case, you can say that you have an abiding conviction of the guilt of the defendant and are satisfied of the truth of the charge, then you are satisfied beyond a reasonable doubt.

(10)

The defendant to the indictment in this case interposes the plea of not guilty, and in support of the plea has adduced testimony before you for the purpose of proving an alibi.

The defendant by this particular defense says to you in substance:

I am not guilty of the offense charged for the reason that I was not at the place where the alleged crime, if any, was committed at the time it was alleged to have been committed.

As regards the alibi relied upon by the defendant in this case, I now instruct you, that an acquittal of the defendant will be justified by the law, if the evidence touching the alibi, after being carefully weighed and tested by you, and having been fairly and impartially considered by you in connection with all the other evidence in the case, shall raise a reasonable doubt of his guilt of the crime charged.

(11)

I further instruct you, gentlemen, that it is not incumbent on the Government in this case to prove that the defendant personally used force or violence upon Rigby or other persons named in the indictment. It will be sufficient to warrant a conviction of the defendant at your hands if the evidence shall convince you beyond a reasonable doubt that the defendant acting in concert with two or more others

Subscribed and sworn to before me this 3d day of November, 1905.

[Seal of Court] ANGUS McBRIDE,

Deputy Clerk U. S. Dist. Court, Alaska, Second Division.

Service hereof accepted November 3d, 1905.

HENRY M. HOYT,

U. S. Dist. Attorney.

[Endorsed]: No. 426-Cr. In U. S. Dist. Court, Alaska, 2d Div. United States vs. E. Anderson. Motion to Vacate Judgment and Sentence. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Nov. 3, 1905. Jno. H. Dunn, Clerk. By ————, Deputy. Geo. D. Schofield, Atty. for Dft. McB.

Minutes of Court—Nov. 4, 1905.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

CHRISTENSEN et al.

Order Continuing Motions in Arrest of Judgment, etc.

United States Attorney H. M. Hoyt stated to the Court that owing to the absence of Geo. D. Schofield,

who had requested that all business with which he was connected be carried over and continued, Mr. Hoyt stating that he desired the minutes to so show; and thereupon the Court directed that the motions pending in the Christensen and Anderson cases be continued over for the reasons stated.

* * * * * * * *

Minutes—Nov. 11, 1905.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

JOHN CHRISTENSEN.

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Order Submitting Motions in Arrest of Judgment, etc.

The motions in arrest of judgment and the motions to vacate judgment and sentence in each of the above cases were submitted to the Court by Mr. Schofield without argument. Mr. Schofield thereupon asked the Court for thirty days to file bill of exceptions in case the motions were overruled, in reply to which the Court stated that he would entertain a motion. United States Attorney Hoyt stated

that he would not consent to any time being granted to file bill of exceptions in view of the facts of the case. Mr. Schofield stated that he would apply for at least twenty days to file bill of exceptions from the time the Court passes upon the motions.

Minutes of Court—Nov. 25, 1905.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. ANDERSON.

Order Overruling Motion for New Trial, etc.

The Court overruled the motion for new trial and also the motion of defendant to vacate the judgment and sentence.

Upon motion of Geo. D. Schofield the defendant was granted twenty days to prepare, serve and file bill of exceptions.

Minutes of Court—Dec. 14, 1905.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

ANDERSON et al.

Order Extending Time to File Bill of Exceptions.

Upon motion of Geo. D. Schofield, the defendant Anderson was granted until December 23d, 1905, to file a bill of exceptions.

* * * * * * * *

Minutes of Court—Dec. 23, 1905.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

ANDERSON.

Order Extending Time to File Bill of Exceptions.

On motion of Geo. D. Schofield, defendant was granted until Jan. 2, 1906, within which to file bill of exceptions.

In the United States District Court, District of Alaska, Second Division.

UNITED STATES

vs.

JOHN ANDERSON.

Order Extending Time to File Bill of Exceptions.

Upon application of defendant, good cause appearing therefor, it is hereby ordered that defend-

ant have until January 15, 1906, to prepare, serve and file bill of exceptions herein.

Done at Chambers this 2d day of January, 1906.

ALFRED S. MOORE,

District Judge.

United States Attorney H. M. Hoyt stated to the

[Endorsed]: No. 426-Cr. In U. S. Dist. Ct. Alaska, 2d Div. United States, vs. John Anderson. Order. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Jan. 2, 1906. Jno. H. Dunn, Clerk. By ————, Deputy. Recorded Vol. 4, Orders and Judgments, p. 71. C. McB.

In the United States District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. W. ANDERSON,

Defendant.

Stipulation as to Filing Bill of Exceptions.

It is hereby stipulated and agreed, by and between the United States and defendant, through their respective counsel, that the defendant may have until the 25th day of January, 1906, in which to prepare, serve and file his proposed bill of exceptions herein.

Dated this 15th day of January, 1906.

HENRY M. HOYT,
Attorney for United States.
GEO. D. SCHOFIELD,
Attorney for Defendant.

[Endorsed]: 426-Crim. In the United States District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. E. W. Anderson, Defendant. Stipulation. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Jan. 23, 1906. Jno. H. Dunn, Clerk. By ————, Deputy. Geo. D. Schofield, Attorney for Defendant. Z.

Minutes of Court—March 13, 1906.

* * * * * * * *

No. 426-C.

UNITED STATES

vs.

E. W. ANDERSON.

No. 426-C.

UNITED STATES

vs.

JOHN CHRISTENSEN.

Order Settling Bill of Exceptions.

Bill of exceptions in each case signed and settled by the Court and re-filed.

In the United States District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. W. ANDERSON,

Defendant.

Bill of Exceptions.

Be it remembered that on the 16th day of October, 1905, at the Special September Term, 1905, of the United States District Court for the Second Division of the District of Alaska, begun and held on the 18th day of September, 1905, the above-entitled cause came on for hearing before the above-entitled Court, the Government appearing by George B. Grigsby and Jno. J. Reagan, Assistant United States Attorneys, and the defendant appearing in person and by Geo. D. Schofield, his attorney, and the roll of jurors having been called by the clerk of the Court and all being present the following proceedings were had:

Whereupon, Joseph Earl, J. W. Marshall, S. N. Bashaw, B. T. Clancey, and Louis Vigelius were each respectively called as jurors and having been each severally duly sworn, were examined by counsel for the defendant as to their qualifications to act as trial jurors in said cause and were passed as to any challenge for cause. Whereupon, the said jurors were then examined by George B, Grigsby, of counsel for the prosecution. Whereupon, counsel for the Government then and there peremptorily excused each of said jurors.

And thereupon William Robb, J. C. Hines, L. Stevenson, F. O. Hanks, P. L. Baldwin, David Davidson and L. H. French were each respectively called as jurors and having each been severally sworn, were examined by counsel for defendant as to their qualifications to act as trial jurors in said cause and were thereupon each peremptorily excused by defendant.

And thereupon P. A. Peterson was called as a juror, and, having been duly sworn, was examined by counsel for defendant touching his qualifications to act as a trial juror. Whereupon counsel for defendant challenged said juror on the ground of actual as well as implied bias. Whereupon, said juror was then examined by counsel for the Government. Whereupon, said challenge was then and there overruled by the Court and exception then and there allowed.

And thereupon P. B. McLeod and O. W. Carlson were then called as jurors and having been each severally and duly sworn were examined by counsel for the defendant touching their qualifications to act as trial jurors in said cause. Whereupon counsel for defendant then challenged each of said jurors on the grounds of actual as well as implied bias. Whereupon no resistance being offered on the part of the Government, the Court sustained said challenges and said jurors were then and there excused.

And thereupon Ralph T. Reber was called as a juror, and, having been duly sworn was examined by counsel for the defendant touching his qualifications to act as a trial juror in said cause. Whereupon the following proceedings were had:

(Questioning by GEO. D. SCHOFIELD, Esq.)

Q. Mr, Reber, did you ever hear what purported to be the facts of this case? A. Yes, sir.

Q. Ever read any articles in the newspapers regarding the case? A. Yes, sir.

Q. From what you read or heard, did you form or express any opinion as to the guilt or innocence of the defendant?

A. Yes, sir, and then I discussed the case with the reporter after the article was written, that is, when I came back from the outside.

Q. Is that opinion such as would require evidence to remove? A. Yes, it would.

Q. Is it an opinion of a mere fleeting nature or one fixed in its nature? A. Pretty well fixed.

Q. Require some considerable evidence to remove it, would it? A. Yes.

Q. Do you believe that with the opinion that you now have, you would make a fair and impartial trial juror, knowing the facts, upon this defendant's case?

A. I do not.

Mr. SCHOFIELD.—Challenge the juror on the ground of bias under the statute.

Whereupon counsel for the Government resisted said challenge and further interrogated said witness as follows:

(Questioning by Mr. GRIGSBY.)

Q. Your opinion relates to the guilt or innocence of this defendant?

A. Not of this particular defendant.

Q. You have no opinion as to the guilt or innocence of this particular defendant?

A. Not as to this particular defendant.

Q. Then is there any reason why you should not be a fair and impartial juror in the case of this particular defendant?

A. I am pretty well acquainted with the circumstances.

Q. Have you any conception of the case as far as this defendant's connection with it is concerned?

A. Not individually.

Q. And the opinion you have simply goes to the fact of whether or not there was a riot out there?

A. Yes, sir.

Q. Now as far as this defendant's guilt or innocence is concerned you could try this case wholly on the evidence, Mr. Reber?

A. I would try to do so but I don't know.

Q. Any other reason why you would not be a fair juror—have an opinion in the case as to this defendant's guilt or innocence?

A. No, not individually as to this particular defendant.

Q. Well, the fact that an indictment has been returned against him does not raise any presumption in your mind against him, does it? A. No, sir.

Mr. GRIGSBY.—Well, it seems to me simply a—

Mr. SCHOFIELD.—Why, he said he did not think Honor.

Mr. GRIGSBY.—If the Court please, the juror says he would not be a fair and impartial juror but the Court is the judge of that; now, he has no opinion whatever as to the guilt or innocence of this particular defendant, simply an opinion as to part of the circumstances of the case.

Mr. SCHOFIELD.—Why, he said he did not think he would make a fair juror; he said he did not think so.

Mr. GRIGSBY.—He is not the judge of his qualification.

Mr. SCHOFIELD.—We insist on our challenge.

(By Mr. GRIGSBY.)

Q. You have no bias or prejudice against this defendant? A. No, I have not.

The COURT.—I think he is a qualified juror. If we would disqualify all those who happen to have some knowledge in regard to these cases coming into the criminal court you wouldn't get qualified jurors; we would get a set of ignorant jurors who did not have intelligence enough to read the papers.

Mr. SCHOFIELD.—May I be permitted to ask one or two further questions of the juror?

The COURT.—No, I think his qualifications are good unless you know of some fact—

Mr. SCHOFIELD.—I ask permission to examine him further—the answer—

The COURT.—No, he answered explicitly. What is it you wish to ask, then I will determine whether I shall permit it.

Mr. SCHOFIELD.—I desire to examine the juror further with reference to this opinion he has.

Mr. REAGAN.—He has answered fully as to his opinion.

The COURT.—He has answered pretty well. (To Mr. Reber.) You may be sworn at the proper time.

Whereupon, counsel for the defendant then and there objected to the ruling of the Court and exception was then and there allowed. Whereupon, counsel for defendant peremptorily excused the said juror.

And thereupon W. A. Sternberg was called as a juror and, being duly sworn, was examined by counsel for defendant touching his qualifications to act as a trial juror in said cause. Whereupon the following proceedings were had:

(Questioning by Mr. SCHOFIELD.)

Q. You heard the statement of this case?

A. Yes, sir.

Q. What is your business? A. Mining.

Q. Where have you been mining?

A. Nome River.

Q. How far up the river?

A. About seven miles from here.

Q. Mining for yourself? A. Yes, sir.

Q. Are you employer of labor.

A. Have not been this year, have been in years past.

Q. Is this your first year in Alaska?

A. No, sir.

Q. How long have you been mining in the District? A. About four years, five years.

Q. During that time, at any time, have you worked for wages in the District?

A. No, sir—oh, I have, yes, while I was manager of the Cold Storage Company, under wages—at the same time I was mining for myself.

Q. Are you still connected with the Cold Storage Company? A. No, sir.

Q. Do you, believe, Mr. Sternberg, that labor has the same right to associate together for its own protection as capital has a right to associate?

A. Indeed, if they don't interfere with the rights of others.

Q. Would the fact that the defendant here was a member of the Federal Labor Union of Nome, bias or prejudice you in any way against him?

A. Not unless that union interferes with others' rights.

Q. Well, suppose the union did interfere with others' rights would that bias you against this defendant?

A. If he was a member of the union and participated in this unlawful manner, that I consider unlawful, it would.

Q. Would you require positive testimony convincing your mind then, beyond a reasonable doubt that he had participated, before you would return a verdict of guilty? A. No.

Q. You would not require that class of testimony?

A. I would have to know that he had not participated, I have a bias if he had participated—if he did not, I have no bias against him.

Q. You would require him to show that?

A. I would be governed by the evidence; if the evidence showed that he had not participated I would not be biased against him.

Q. Then as I understand you, you would require the defendant to show that he had not participated?

A. No, sir, I think I am broad enough to believe that the burden of proof is on the Government to show that he did participate.

Q. Would you permit the required presumption that the defendant was innocent to follow you all through the trial until he was proven guilty of the charge by the evidence in the case beyond a reasonable doubt? A. Yes, sir.

Q. Would you do that knowing him to be a member of that particular union if he should appear—if he is charged jointly with one John Christensen, a member of that union, and that Christensen has been found guilty?

Mr. REAGAN.—I object to the question. He doesn't know whether he is a member or not.

Mr. SCHOFIELD.—It will develop.

The COURT.—Objection overruled.

(Question read.)

A. The Christensen matter is disposed of and would not enter into my calculations at all.

Q. Now, would the fact that an indictment had been returned against this defendant bias you in any way?

A. Well, it would lead me to think that there was evidence before the Grand Jury that he was one of the participants in the riot.

Q. And that opinion would follow you through the trial would it?

A. Well, I would want it made clear that he wasn't there.

Q. And you would require him to do that by testimony convincing your mind that he was not there?

A. Yes.

Mr. SCHOFIELD.—Challenge the juror on the grounds of actual and implied bias.

Whereupon George B. Grigsby, of counsel for the United States resisted said challenge and questioned the juror as follows:

Q. Now, would you follow the instructions of the Court as to the law? A. I certainly would.

Q. And if the Court should instruct you that the defendant was entitled to the benefit of the presumption of innocence until his guilt is established beyond a reasonable doubt, you would give him that presumption, would you not? A. I would.

Q. And you would try the case wholly on the evidence admitted at this trial, would you, and wouldn't allow the fact that the defendant has been indicted to weigh against him?

A. Not in the least.

Whereupon the Court overruled said challenge and an exception was then and there allowed. Whereupon counsel for defendant then and there peremptorily excused said juror.

And thereupon A. J. Wisner, Joseph Scliscovithch, H. L. Stokes, Archie Graham, M. E. Kerr, C. H. Leedy, E. R. Holden, C. B. Dean, J. J. McKay, Charles Krues, Albert Wilson and M. C. Smith were duly sworn, were examined by counsel for defendant touching their qualifications to act as trial jurors in said cause. Whereupon counsel for defendant passed each of said jurors as to any challenge for cause. Whereupon counsel for the Government then examined each of said jurors and passed each of said jurors as to any challenges for cause. Whereupon each of said jurors then and there became the trial jurors and tried said cause.

And thereupon JOHN RIGBY, a witness on behalf of the prosecution, was called, being first duly sworn, testified on his direct examination, as follows:

My name is John Rigby, I am foreman of the Nome Construction Company and have charge of the building of the jetty and improvements, at the mouth of

(Testimony of John Rigby.)

Snake River in Nome, Alaska, for that company. On the night of August 12th, at eleven o'clock, I started in a boat from the sandspit, near the mouth of Snake River, to go out and do some lightering for the company. Scott Burgess, Horace Bell, John Bustram, O. L. Greene and Fred Thorp were with me. We rowed leisurely out to the steamship "Tampico," where we expected to find the tug, but not finding it we rowed to the westward to see if we could find the Ames' lighter. Not finding the lighter we rowed from there back to the steamship "Tampico" and from there we rowed to the Nome wharf, where we found the tug. The captain of the tug informed us where we would find the Ames' lighter, which we ascertained was ying about a mile off shore from the end of the Nome wharf and a little to the eastward. We rowed the boat leisurely out to the Ames' lighter, the tug expecting to follow us and pick up the lighter and take us to the ship. When we had approached to within about 150 feet of the Ames' lighter three boats came out from behind the lighter. One boat came along each side of us and smashed into us while the other two lay across our bow. The men in the attacking boats threatened that if the men did not get out of my boat and into their boats they would kill them. The first that I noticed when these boats came out from behind the

(Testimony of John Rigby.)

lighter some one shouted, "There they are; let's sink them," and they collided with our boat and took two men out—Bustram and one other man. Two boats ranged alongside of our boat and one boat along the bow, and they got hold of the painter of our boat and started to tow us toward Nome River. Thorp was in the bow of our boat and I called to him to cut the line. He was unable to do so because they kept slashing at him with the oars. I then went forward and cut the tow-line, when some one exclaimed, "They're adrift," the three boats then closed in on us again. Burgess, in the meantime, had been struck with an oar and knocked out, hurt pretty badly. They pulled him into their boat when the other men in my boat got into the attacking boats. The boats then pulled away toward the beach when some one exclaimed, "We have forgotten his oars," then somebody spoke up and said, "Well, the old gray-headed —— can't row anyway, and he'll drown before morning"; they then pulled away and left me alone in my boat. While they were out at the "Tampico" there was some boat that approached us; I don't know who was in the boat. I called out to them to stop and we backed water and some one in the approaching boat sung out, "Is that you, Sam?" I said "Yes," and for them to keep off. They turned around and pulled toward shore and I don't

(Testimony of John Rigby.)

know where that boat went. I know the defendant. I saw him out there that night. I don't think it is possible for me to be mistaken. This assault occurred out on the waterfront about a mile southeasterly from the end of the Nome wharf, and the Nome wharf is about three hundred feet east of Steadman Avenue in Nome, Alaska. When we were attacked, the men in the boats used all kinds of language, indecent and threatening language that could be used. After the boats left me, I rowed my boat ashore and landed on the sandspit at five or ten minutes past two o'clock in the morning of August 13th, 1905. As near as I can arrive at the time of the assault, it was from a quarter after one to half-past one in the morning.

Whereupon said witness was then cross-examined by counsel for defendant, and on his said cross-examination testified as follows:

There were three boats in the attacking party with four men in one boat and six men in another boat, and I think more than six in the third boat, Two or three minutes elapsed, not more than five minutes, during the time of this altercation from the time the boats first collided with us, until the rowed away and left me alone in my boat. When they took our boat in tow they did not tow us seaward or to the south; our boat did not go south of the Ames' lighter

(Testimony of John Rigby.)

but went north of it and parallel with the coast line; they probably towed us 250 yards before I succeeded in cutting the line. The defendant was in the boat that contained four men; they came up on our starboard bow. I do not know how Anderson was dressed; did not notice what kind of a hat he had on. I did not notice his clothing in any manner at all. It was about a mile and a half from where they left me to where I landed on the beach and I arrived on the beach at the place from which we started between five and ten minutes past two. I was in a hurry and rowed at the rate of about three miles an hour. When I landed on the sandspit I held my watch close to my face; it was rather difficult to see, but it was between five and ten minutes past two o'clock. I do not remember of testifying in the Christensen case that it was dark that night; it was not very dark nor very light. If I said "dark," I don't remember it, but will say so now.

Whereupon said witness on his redirect examination by counsel for the Government testified as follows:

I use glasses but I didn't have them with me that night.

And thereupon HORACE BELL was called as a witness on behalf of the prosecution and, being first duly sworn, was examined by counsel for the prosecution and testified on his direct examination as follows:

My name is Horace Bell I have been living in Nome this summer and have been working for Captain E. W. Johnston. I know the defendant. I have seen him frequently. I think the first time was in the Lacey saloon. After the "Tampico" got here I saw him on the street; I could not say just when or where. I saw him out to the "Tampico" in a dory. He was out there with the longshoremen trying to get us to quit unloading. On the night of August 12th, I was with Mr. Rigby, Thorp, Bustram, Burgess and Green to take the freight off the "Tampico." We left the sandspit at eleven o'clock on the night of August 12th, 1905, and rowed out to the "Tampico." From there we rowed to the westward to look for our lighter. Not finding it we came back to the ship and then rowed from there to the end of the Nome wharf, where we found the tug. Mr. Rigby waked up the captain and found out where the Ames' lighter was lying. He told us to go out to the lighter and get things ready and the tug would follow us. We rowed out to the Ames' lighter, which was about a mile off shore from the end of the Nome wharf, and when we got to within about 250 feet of the

(Testimony of Horace Bell.)

lighter we were attacked by three boats containing about twenty men. The first I noticed, one boat came out from behind the lighter and somebody called out, "Here they are; we have got them now, the scabs," and used other vile names I cannot say just what all. After the boats came out one of the boats took our painter and started towing us and Mr. Rigby cut the line. The boats then closed in on us again and there was a general mix-up. Bustram was sitting ahead of us in our boat, using one pair of oars himself, and before the line was cut there had been an interchange of oars. I think that Bustram was the only man in our boat who struck back. After the painter was cut the boats closed in on us and they told us to get into their boats and if we didn't that would be our last chance. They helped two of the boys out and the rest of us climbed out and into their boats. I saw the defendant there with the men and I recognized him. I was convicted of a crime. I was convicted of the crime of robbery at Baker City, Oregon, with having robbed a gambling-house, and sentenced to imprisonment in the Oregon penitentiary for the term of twelve years. I served nine years' time. I was released last September. I am the Horace Bell who was a witness in the Christensen case and denied that I had been

(Testimony of Horace Bell.)

convicted of a felony and had served time in the Oregon penitentiary as a convict, but afterward admitted that it was the truth.

Whereupon, the said witness was cross-examined by counsel for the defense, and on his said cross-examination testified as follows:

We left the sandspit at eleven o'clock and rowed out to the "Tampico." From there we rowed about three hundred yards to the westward to look at some lighters, and from there back to the ship and then to the Nome wharf, and from the Nome wharf we rowed out to the Ames' lighter. I don't think it was five or six miles; it was about a mile from the sandspit to the "Tampico" and about the same distance from the ship to the Nome wharf, and probably a little further from the Nome wharf out to the Nome lighter. I don't know what time we left the Nome wharf. I was sitting in one of the stern seats rowing one of the stern oars in our boat, and when we came out near to the lighter these three boats came out from behind the lighter and attacked us. I don't know how long they had been lying there. The defendant was in the second boat that attacked us and in the same boat that Christensen was in. Anderson, with another man, was in the bow of his boat. I don't know how many men were in the boat, as a man under those circumstances cannot pay very good

(Testimony of Horace Bell.)

attention. The boat Anderson was in had more than six men in it, I am satisfied of that. Perhaps three or four minutes elapsed during the interchange of oars at the time we were attacked and before the men were all taken out of our boat. I observed Anderson during that time and he was in the bow of his boat all the time that I saw him. I afterward got out of our boat into the boat with Anderson and Christensen and Anderson was still in the bow of that boat. I was sitting in a seat just past the middle of the boat and facing the stern, and I don't know how many men were in this boat at that time because I couldn't see who was behind me. It was two o'clock when we got ashore. I think Mr. Thorp looked at his watch and said so. We landed on the beach near the Standard Oil Company's warehouses. I don't know whether there was a moon that night or not. It was twilight; it was dark but not so dark but what you could distinguish objects. I think I met defendant the first time in the Lacey saloon, I next met him on the street; I can't say just where it was. I never worked with him. I never had any particular occasion to observe him only in a general way. I did testify in the Christensen case that during the years 1900, 1901, 1902, 1903 and 1904 I was in various places in the States

(Testimony of Horace Bell.)

of California, Nevada, Oregon and Montana, which was not true.

(It is admitted by the district attorney that the witness on the trial of the Christensen case, jointly indicted with his defendant, testified that he had not been convicted of a felony and had not served time in the Oregon penitentiary, and left the stand with that testimony still standing in the case, but subsequently, and before the testimony in said case, returned to the stand and admitted that he had been so convicted and did so serve time in said penitentiary.)

Whereupon said witness was then examined by counsel for the Government and testified as follows on redirect examination:

He might have changed his position but if he did I didn't notice it. I don't know whether defendant remained in the same boat all the time or not.

And thereupon, SCOTT BURGESS was called on behalf of the prosecution, and being duly sworn, was examined by George B. Grigsby, of counsel for the United States, and on his direct examination testified as follows:

My name is Scott Burgess. I have known the defendant since the 11th day of August, to recognize him. I saw him out at the steamship "Tampico." He came out in a boat with several other men.

(Testimony of Scott Burgess.)

There were a number of boats around and the object of the men in the boats was apparently to get the men who were working for Capt. E. W. Johnston, to quit unloading the "Tampico." When the men refused to go ashore, then the men in the boats jeered and (blackguarded) and called them names. I next saw the defendant on the afternoon of the 12th of August, 1905. He came out for the same purpose with some longshoremen. I saw him between ten and eleven o'clock on the night of the 12th on the street in Nome, in front of the I. X. L. Restaurant. I next saw him on the morning of the 13th. On the night of the 12th with Mr. Rigby, Fred Thorp, John Bustram, Horace Bell and O. L. Green, I left the sandspit at eleven o'clock to go out to the steamship "Tampico" and from there we rowed out to see some barges to the westward. We didn't find the barge we were looking for, and then rowed back to the ship, and from there to the Nome wharf where Mr. Rigby waked up the captain of the tugboat and found out where the Ames' lighter was. So we went from there out to the Ames' lighter. When we got out close to the lighter we were assaulted by three boats full of men and taken ashore. They were apparently lying behind the lighter as we came up, when they apparently came out from behind the lighter and apparently assaulted us with oars and took us

(Testimony of Scott Burgess.)

captive. When they came out some one cried out, "We have got them now," and they used very abusive language. They said they had got us and the boats then came together and everything was excitement there and they were slashing at us with their oars, and I couldn't say just what was said exactly. Several parties were struck with oars, Mr. Rigby and a man standing in front of him, and somebody struck me over the head. Some one had thrown a rope over me and I was trying to get my knife to cut the rope when I was struck on the head and knocked out. When I came to I was being held by Thorp. He was right behind me in the bow of the boat and he caught me as I fell back, and Mr. Rigby was holding me as well. I saw the defendant there that night. I know him as I know him now looking at him. They took me out of our boats and into one of their boats and landed us ashore near the Standard Oil Company's Warehouses. I saw the defendant on shore at the Standard Oil. We got ashore at two o'clock. I know, because I looked at my watch. There was a good deal of conversation going on while we were being brought to shore and after we landed. One fellow said that it was a good thing that they came to us sober or it would be worse than what it is.

(Testimony of Scott Burgess.)

Whereupon said witness was then cross-examined by counsel for the defendant and on his said cross-examination testified as follows:

I should judge there were twenty men in the boats attacking us. There might have been a boat that had as few as four men in it, but I did not recognize the fact. The men were about evenly divided between the three boats. Anderson was not in the same boat that Christensen was in; I am sure of that. It was a clear evening; there was no moon that night.

And thereupon FRED THORPE was called as a witness on behalf of the prosecution, and, being first duly sworn, was examined by counsel for the Government and testified as follows on his direct examination:

My name is Fred Thorpe. I know the defendant by sight. The first time I saw him was on the 12th of August, 1905. I was working for Capt. E. W. Johnston in lightering the "Tampico." He was out there with others in boats "bawling" us out. He was out there in boats "bawling" us out two or three times. Rigby, Burgess, Bell, Bustram and I left the mouth of Snake River about eleven o'clock and rowed out to the "Tampico." After rowing around a while we rowed then, down to the tug and from there we went off to the North Coast lighter lying to the south. Just as we got out there three

(Testimony of Fred Thorpe.)

boats loaded with men rushed at us and they hollered, "There they are, boys; drown them," and they came at us and slashed at us with oars. They pulled two men out of the boat and struck Burgess on the head and he went down. I helped Burgess up and held him. I saw the defendant that night. I came ashore in the same boat with him. John Christensen was in that boat. Bell and Burgess were not in that boat. There were twenty or thirty men in the boats that attacked us. We got ashore at two o'clock, I looked at my watch.

Whereupon the said witness was cross-examined by counsel for the defendant, and on his cross-examination testified as follows:

I live in Nome. I have been a bar-tender for fourteen or fifteen years on the outside. I went to work for the Johnston Lighterage Company on the 11th of August. Up to this time I had never seen the defendant. I never talked with him or worked with him. I don't know the number of men in each boat. The boats all came out together and one came on either side of our boat and one on the bow. I was sitting in the bow of our boat. I saw the defendant there but I don't know which boat he was in or which side or whether he came up on the side or bow, but I know that he was in the boat that I went ashore in. I was in the bow of the boat when

(Testimony of Fred Thorpe.)

we came ashore and Anderson was in about the middle of that boat. There was two or three men between me and Anderson. I was sitting in the bow and facing the stern. I don't know whether Anderson was rowing or not. I don't know who was rowing. I don't know whether Anderson was facing the stern or not. I remember seeing him there. I don't know whether he was facing me, or his back toward me. After we started to come ashore I don't remember of the men in the boat changing positions. Our boat landed on the beach bow first. I was the second or third man out. There was no surf running that night. I don't think that defendant had on a white sweater that night, but I wouldn't swear to it. I don't know whether he had on a light spring overcoat, or a white sweater, or a sou'wester hat or not, I wasn't paying any attention as to how he was dressed, but I knew him all right. They took the painter of our boat and started to tow us south, out to sea, and towed us some distance, some out beyond the lighter before the painter was cut.

Whereupon said witness was further examined by counsel for the Government and on his redirect examination testified as follows:

I tried to cut the painter two or three times, but they were striking at me with the oars so I couldn't, so Mr. Rigby came forward and cut the painter.

And thereupon the prosecution rested its case.

Whereupon the following proceedings were had:

Mr. SCHOFIELD.—The defendant, E. W. Anderson, your Honor, at this time moves a dismissal and that the jury be instructed to return a verdict of not guilty, upon the following grounds:

1. The indictment does not substantially conform to the requirements of Chapter VII, Title Two of the Criminal Code of Alaska in this, to wit: It is endorsed a "true bill" and such endorsement signed by the foreman of the grand jury as such;

2. The indictment does not contain a statement of facts stating the offense in ordinary and concise language without repetition and in such manner as to enable a person of common understanding to know what is intended;

3. It is not direct and certain as regards the crime charged in that it alleges that the offense was committed by an assault and was committed by threats to assault;

4. It does not contain the particular circumstances of the crime charged and such circumstances are necessary to constitute a complete crime;

5. The facts stated in the indictment do not constitute a crime, said facts therein pleaded being legal conclusions only, and said indictment contains no allegation of an unlawful assemblage of persons, or

that an assemblage congregated lawfully and thereafter become an unlawful assemblage;

6. The indictment charges an assault and an attempt to commit an assault without the necessary allegations as to what was done to carry the assault into effect or the mode or manner of attempting the assault.

Whereupon the Court overruled said objection and the defendant then and there excepted to said ruling and an exception was then and there allowed.

And thereupon, R. BRUCE MILROY, a witness called in behalf of the defense, after having been duly sworn, was examined by Geo. D. Schofield, attorney for defendant, and on his said direct examination testified as follows:

My name is R. B. Milroy. I have known the defendant since this spring sometime. On the night of August 12th, 1906, Saturday night prior to the occurrences in question, I was at the Miners' Union Hall. They held a meeting that night which convened a little after eight o'clock. I was chairman. The meeting adjourned at a little before twelve o'clock. I saw defendant there that night. He was sitting up right forward and I couldn't help but see him. He was there during the entire meeting.

Whereupon the witness was then cross-examined

(Testimony of R. Bruce Milroy.)

by counsel for the Government and on his said cross-examination testified as follows:

I am positive the defendant was there all the time I was there. I appointed him to take up the password and after that he sat on one of the front rows of benches. I am sure he did not leave the meeting after that while I was there. Had he left the meeting he would have to ask permission of the chairman to leave, and I know he did not leave. There were several who did leave the meeting. I remember Mr. Austin asked permission to leave the meeting. I don't remember just what time. I don't remember of Mr. Christensen being present. Mr Oleson was also excused and there were others that I recall by sight rather than by name. I have been a member of the Miners' Union shortly after its organization. I am not a member of the Longshoremen's Union. They were merging the Miners' Union into the Western Federation that night. There was considerable business transacted. I had no particular reason for noticing the defendant except that he sat in a prominent place in front and his features are such that would naturally impress a person more than an ordinary countenance. The first time I knew I was going to be a witness was after the preliminary examination. I was doing some newspaper work and was going up and take a

(Testimony of R. Bruce Milroy.)

report of the case at the preliminary hearing when I was informed that "Curly" (Anderson) was bound over. I did not know him by that name until to-day, but knew him by sight. After the preliminary hearing I talked with Anderson and he asked me if I remembered his being at the Miners' meeting and I told him that I did. I think I appointed him to take up the password, though he might have been on a committee. I know he was appointed by the chair to do something that night. I don't have a distinct recollection about it. Mr. Schofield asked me during the noon hour to-day. I don't know how he became aware that I knew Anderson was at the meeting that night.

And thereupon JAMES EKDAHL, a witness called on behalf of the defense, having been duly sworn, was examined by Geo. D. Schofield, counsel for the defendant, and on his said direct examination testified as follows:

My name is James Ekdahl. I have known defendant three or four years. I went to the Miners' Union Hall that night at eight o'clock and remained there until the meeting adjourned. The defendant was there all of the time. I remained there after the meeting. I don't know just how long. He was there while I was there.

(Testimony of James Ekdahl.)

Whereupon said witness was then cross-examined by counsel for the prosecution and on his said cross-examination testified as follows:

I got there before eight o'clock. I was warden at the door that night. Anderson did not do anything in particular. I don't think he acted in any official capacity. I don't remember that he did. I think Mr. Milroy presided and Mr. Hickey was secretary of the meeting. I took up the password. He was on the floor once or twice and addressed the chair. After the adjournment I know the defendant was walking up and down the floor talking a lot of nonsense. I did not leave the hall until one o'clock. I don't know whether defendant was there when I left or not. I am a member of the Longshoremen's Union and have been working at longshoring during the summer. I joined the Miners' Union on the 19th of March, 1905. There was quite a crowd that remained at the hall after the Miners' meeting was over. I left there at one o'clock.

And thereupon E. J. HICKEY was called as witness on behalf of the defense, and having been duly sworn, was examined by counsel for defendant, and on his said direct examination testified as follows:

My name is E. J. Hickey. I am secretary of the Miners' Union. I have known the defendant nine or ten months. The meeting convened at about half-

(Testimony of E. J. Hickey.)

past eight and adjourned a little before twelve o'clock. The defendant was present from half-past ten o'clock until the meeting adjourned and for some time after. He was there when I left at a quarter past twelve. At a quarter past twelve I went to the North Pole Bakery for a cup of coffee and was gone possibly about an hour. I returned leisurely to the hall and arrived there about one o'clock and defendant was there when I returned and remained there for some little time after that. Anderson remained in the hall, after my return, until about three o'clock when all the men assembled in the hall left. There was five or six there talking matters over until nearly three o'clock, when they left and Anderson left with them.

Whereupon said witness was then cross-examined by counsel for the Government, and on his said cross-examination testified as follows:

I know it was a quarter past twelve when I left the hall because I looked at my watch. I stayed at the North Pole Bakery probably twenty-five or thirty minutes and then returned to the hall. After I returned from the North Pole Bakery I wanted to go to bed. I didn't tell the boys that I did want to go to bed. I consulted my watch and found it was a little after one o'clock—ten or fifteen minutes, I am not sure which, but about that time. I know the de-

(Testimony of E. J. Hickey.)

fendant was there at half-past ten because at that time I was taking the names of all the members in the hall. We were receiving a Charter from the Western Federation of Miners and I took the names of all members present, who would be charter members of that federation. The names were all taken in a book. Defendant's name was taken. His name is on the book. I don't remember looking at the book since the night they were written down. I can produce the book. I have had the custody of the book and each man's name is in there in my handwriting. The names were written that evening. James Ekdahl was appointed warden or sergeant at arms but I don't think there was any password taken up that night. The old password became obsolete. I think Ekdahl was the only appointment made by the chair that night. I think that was the only vacancy. I took the names by going around individually to each member and asking his name and writing it down in the book at the time. Immediately after the meeting adjourned I had particular occasion to observe the defendant. He has a peculiar way of expressing himself and he was standing near my desk and was causing me some annoyance by his talk as I had business to transact at that time after the meeting was over. I don't remember all the persons who were there. When I wanted to go to bed, I recollect Char-

(Testimony of E. J. Hickey.)

ley McKay, Harry Moore, this Anderson and a man by the name of Ment. My reason for going back to the hall after lunch was that I have a room there in the hall and sleep there. I slept there that night. I saw the defendant there until about three o'clock in the morning. Defendant was there when I left at fifteen minutes past twelve and was there when I came back a litttle after one o'clock. He was there most of the time while I was there. I wouldn't say continuously, he might have left for a short time, possibly a half an hour—and come back again. I can produce the book with the names taken that night. I will produce the book if the Court orders me to do so.

The COURT.—I direct you to produce it at once after you are dismissed from the stand.

The book was thereafter produced by the witness and contained the name of E. W. Anderson (the defendant) with others written thereon in the handwriting of the witness.

And thereupon CARL MENT, a witness produced on behalf of the defense, was called and having been duly sworn, was examined by counsel for defendant, and on his said direct examination testified as follows:

My name is Carl Ment. I have known the defend-

(Testimony of Carl Ment.)

ant about two years. I was present on Saturday night at the Miners' meeting held on August 12th, 1905, from eight o'clock in the evening, when it convened, and remained through the meeting until it adjourned at about five minutes to twelve. After the meeting a number of us remained at the hall. I didn't leave the hall until ten minutes past one. As I was going out I remember speaking to Anderson and asking what he had done with his dog,.

Whereupon said witness was then cross-examined by counsel for the Government, and on his said cross-examination testified as follows:

When I left it was ten minutes after one and "Curly" (Anderson) was still there. Anderson had his hat on and was there with several others. I know Mr. Hickey and Mr. Moor were there. He was not apparently going out; he was standing there talking. Hickey had been there only a short time. He had left the hall sometime shortly after twelve o'clock and had been out around somewhere and had just come back. Hickey had been there probably five minutes. I don't think as much as ten minutes. I was there all the time during the meeting and defendant was there all that time. A man couldn't help but notice Anderson because he has a queer way of expressing himself and he spoke several times that night. He might have spoken twenty times, more or

(Testimony of E. J. Hickey.)

less. I noticed him during the meeting. He was sitting the third bench from me, in front of me. I was on the third row and he was sitting on the front row. James Ekdahl was warden that night. The defendant held no office and didn't take up the password. We had a charter that night and didn't have any password.

And thereupon E. J. HICKEY, a witness on behalf of the defense, was then recalled by counsel for the Government for further cross-examination.

And thereupon C. J. McKAY, a witness on behalf of the defense, was then called and having been duly sworn, was examined by counsel for defendant, and on his direct examination, testified as follows:

My name is C. J. McKay. I am on the police force of Nome and am on duty at the Lacey Saloon. I have known the defendant since last spring. I was at the Miners' meeting on Saturday night, August 12th, 1905. I saw the defenadnt Anderson there and was sitting alongside of him and at about half-past nine I was called upon to audit some bills and I went over to the desk at the other end of the hall. We afterwards decided not to look up the bills that night and I went back to where "Curly" (Anderson) was sitting. I remained in the hall until after twelve o'clock that night. Anderson was there when I left.

(Testimony of C. J. McKay.)

Mr. Moor, Mr. Hickey and myself went over to the North Pole Bakery from the hall. We returned from the bakery to the hall at about one o'clock. Mr. Anderson was there when we returned. When I went in Anderson and Carl Ment were sitting near the desk. After I returned I remained in the hall until about three o'clock. Mr. Moor was from Denver, Colorado, and he and I got into a conversation about Colorado and New Mexico, experiences we had had in that country, prospecting. Mr. Anderson and I left the hall together at about three o'clock in the morning.

Whereupon said witness was then cross-examined by counsel for the prosecution and on his said cross-examination testified as follows:

I saw the defendant about one o'clock after I got back. I couldn't say how long he did stay there after that. After I came back I was looking over some of the bills again and that probably took fifteen minutes. Then I had Mr. Hickey put them in the safe. I didn't take any particular notice of Anderson except in a general way, but know that he was there half an hour or so after I got back to the hall. I know that after we got back to the hall he talked with us for half an hour because we were josh-ing him. I was sitting in the first or second seat with "Curly." I remember about the names being

(Testimony of C. J. McKay.)

taken down that night by Mr. Hickey. That must have been done about ten o'clock or a little later. When we were receiving the instructions I particularly recollect joshing "Curly" about the handshake; it was different from the one we had had. I remember joshing him about it.

And thereupon JACK McCARTY, a witness produced on behalf of the defense, was called and having been duly sworn was examined by counsel for defendant, and on his said direct examination testified as follows:

My name is Jack McCarty. I recollect the night of August 12th and morning of the 13th of August, 1905. I was working at that time at the Lacey Lunch Counter. The defendant came in there between one and two o'clock that morning. Charley Bayrd works with me and there were several other persons present. I recollect the fact of the defendant being there because Anderson talks peculiarly and he generally orders a ham sandwich and he calls it a "hom sondwich." We saw him coming and Charley slapped me on the back and says, "I'll bet he orders a 'hom sondwich,'" and sure enough he ordered in his broken way a ham sandwich. I went off shift that night five or ten minutes before two o'clock and this fifteen or twenty minutes before I went off shift. I didn't see him again that night.

(Testimony of Jack McCarty.)

He was in again that night and I wouldn't have remembered the instance of his being in Saturday night except that in speaking of the arrest he said "Yesterday I wasn't worth anything and now I am worth two thousand dollars," speaking of the amount of his bail. That was between one and two o'clock Sunday night.

Whereupon said witness was then cross-examined by counsel for the prosecution and on his said cross-examination testified as follows:

He left the restaurant before I did, went through the door into the saloon. I think he was in the restaurant a half hour. The first I knew I would be a witness in the case, Mr. Anderson spoke to me yesterday. I recollect his being in there Saturday night, through the two thousand dollar incident that occurred Sunday. I spoke to Mr. Schofield to-day. Mr. Schofield asked me the particulars about it, a few moments ago and I told him what made it so forcibly impressed on my mind was that "Curly" (Anderson) said he was worth two thousand dollars. All the boys were laughing about it down there.

And thereupon CHARLES BAYRD, called on behalf of the prosecution, after having been duly sworn, was examined by counsel for the defendant, and on his direct examination testified as follows:

(Testimony of Charles Bayrd.)

My name is Charles Bayrd. On the night of August 12th and morning of the 13th, 1905, I was working in the Lacey Lunch Counter. My hours for working are from seven at night to seven in the morning at the Lacey Lunch Counter. I have known the defendant ever since I have been working there. I saw him on the morning of August 13th between the hours of one and two o'clock. I saw "Curly" coming and says to McCarty: "Here comes 'Curly.' I'll bet he orders a 'hom sondwich.'" We joshed him for a while, and then he ordered his ham sandwich. I know that Anderson came in before McCarty went off shift. He came to me the next night, I think it was, and wanted to know if I would do him the favor of testifying in the Commissioner's Court as to his being there on Saturday night, and I told him I would. I couldn't be mistaken as to Mr. Anderson's being in there Saturday night.

Whereupon said witness was then cross-examined by counsel for the prosecution, and on his said cross-examination testified as follows:

What makes me remember the time was that McCarty said he only had an hour to work, and he was quitting at two o'clock sharp. I remember that shortly before "Curly" (Anderson) came in McCarty made that remark. I know McCarty always went off shift at two o'clock and that "Curly" came

(Testimony of E. W. Anderson.)

in there sometime before McCarty quit work. Yes, I mentioned "hom sondwich" on the preliminary examination; that was the only thing that called my attention to the defendant being there on that night. I don't know whether "Curly" was in the next night or not.

And thereupon E. W. ANDERSON, a witness on behalf of himself, was called and having been duly sworn, was examined by counsel for the defendant, and on his said direct examination testified as follows:

My name is E. W. Anderson. I am the defendant. On the night of August 12th, 1905, I went to the miners' meeting and arrived there about eight o'clock. I stayed there from that time until a quarter past one. The meeting adjourned about twelve o'clock. Mr. Milroy was chairman; Mr. Hickey was secretary of the meeting. Our lodge joined the Western Federation of Miners that night and we took out a charter; it is hanging on the wall of the Union Hall now. After the meeting adjourned there were a number of us that remained in the hall talking over matters, and I stayed there until a quarter past one, and then I went down to the Lacey Lunch Counter. I told McKay—that fellow with the star on—that "I had got big wrinkle in my stomach" and I

(Testimony of E. W. Anderson.)

was going down to get some feed. When I got there McCarty was there and a number of people eating lunch, and Bayrd was there. I stayed there until nearly two o'clock. McCarty said he went home at two o'clock, and he took off his apron, or that white sheet thing he have on, and I went out and went back to the Miners' Hall. When I got back to the hall Mr. Moor, who organized our union into the Western Federation of Miners, and Mr. Hickey and Charley McKay was there. I stayed there talking until three o'clock, down to Dry Creek, where I have been living.

Whereupon witness was then cross-examined by counsel for the prosecution, and on his said cross-examination testified as follows:

I am a fireman and engineer. I work in the Big Hurrah Quartz Mine last winter, and I worked for Mr. Fleming. I was a member of the Federal Labor Union, but got behind with my dues and can't go to their meetings. I was out to the "Tampico" once when they dropped something overboard and I picked it up for them. I was not trying to get Johnston's men to quit their employment in unloading the "Tampico." I have seen John Christensen a couple of times in the hall; that's all I know him. I don't think I know Frank Green. I know William Austin, the secretary of the Federal Labor Union.

(Testimony of E. W. Anderson.)

I was not appointed to take up the password. I did put some coal in the stove. I left the hall a little bit after Hickey got back. I went to get my "hom sondwich," and then I came right back to the hall and stayed there until three o'clock. I went out when the others did, and Hickey went to bed. The first I knew of a riot was Sunday, when I got arrested at about twelve o'clock. I had come from home and was just passing the Staples Building when I was arrested. I don't know Mr. Rigby. I never told him I would fix him. I never talked with him at all.

Whereupon witness was then further examined by counsel for the defense, and on his redirect examination testified as follows:

I never had nothing to do with the riot at all. I don't know about it at all until I was arrested.
never had nothing to do with the riot at all, and I

Defendant then introduced his membership card to the Western Federation of Miners, which was dated Aubgust 12th, 1905.

And thereupon the defense then rested its case.

And thereupon the Court instructed the jury in writing. Defendant, in the presence of the jury, took exception to the following instructions:

Defendant excepts to instruction No. two of the Court, reading as follows:

"Now, I instruct you that the use of force and violence unaccompanied by threats to use force and violence, if made and committed by three or more persons acting together and without authority of law will constitute the crime of riot under the section quoted."

Defendant excepts to the instruction numbered four of the Court, reading as follows:

"The allegations of the indictment which the Government must prove in order to warrant you in rendering a verdict of guilty against the defendant, are:

1. That within three years next preceding September 30, 1905, and within the District of Alaska, the defendant, E. Anderson, was acting together with any two or more of the other defendants named or unnamed, and without authority of law;

2. That so acting together with any two or more of said defendants and without authority of law, the defendant, time and place above mentioned, made an assault with force and violence or aided and abetted by his presence, or by his words and gesture, an assault to be made with force and violence upon any one or more of the following named persons, to wit: John Rigby, Fred Thrope, Horace Bell, O. L. Green, Scott Burgess, and John Bustram.

If all the evidence adduced at the trial convinces you beyond a reasonable doubt of the truth of these

allegations, it will then be your duty to render a verdict of guilty. On the other hand, if the evidence fails to so convince you, your duty will be to return a verdict of not guilty."

Defendant excepts to instruction No. ten of the Court, reading as follows:

"The defendant to the indictment in this case interposes the plea of not guilty and in support of the plea has adduced testimony before you for the purpose of proving an alibi. Defendant by this particular defense says to you in substance, 'I am not guilty of the offense charged, for the reason that I was not at the place where the alleged crime, if any, was committed at the time it was alleged to have been committed.' As regards the alibi relied upon by the defendant in this case, I now instruct you that an acquittal of the defendant will be justified by the law if the evidence touching the alibi, after being carefully weighed and tested by you and having been fairly and impartially considered by you, in connection with all the other evidence in the case, shall raise reasonable doubt of his guilt of the crime charged."

Defendant excepts to instruction No. twelve of the Court, reading as follows:

"Gentlemen of the jury, the defendant in this case has seen fit to go upon the stand as a witness in his own behalf.

Now, you are instructed that under the law he is a competent witness and his testimony is to be weighed and considered in the manner you will weigh and consider the testimony of any other witness, exercising your judgment as reasonable men and keeping in mind these instructions bearing upon the proper manner of treating evidence and giving to it its due and just effect."

Defendant excepts to the refusal of the Court to give his request No. one, reading as follows:

"The defense interposed by defendant Anderson in this case is what is known as an alibi, that is, that the defendant was at another place at the time of the alleged commission of the crime charged, and the Court now instructs you that such evidence is as proper and legitimate if proved as any other, and all the evidence bearing upon that point should be carefully considered by the jury, and if, in view of all the evidence, the jury has any reasonable doubt as to whether was in some other place or places than at the place indicated in the indictment when the crime was committed, should you find a crime was committed, you should give the defendant Anderson the benefit of that doubt and find him not guilty.

Where the defense is an alibi as in this case, the jury are instructed that the defendant is not re-

quired to prove that defense beyond a reasonable doubt to entitle him to an acquittal.

It is sufficient if the evidence upon that point raises a reasonable doubt of his presence at the time and place of of the commission of the crime charged, and if upon the evidence there is in the minds of the jury a reasonable doubt as to whether or not the defendant Anderson was present at the time and place mentioned in the indictment, you should give him the benefit of the doubt and find him not guilty."

Defendant excepts to the refusal of the Court to give his instruction No. two, reading as follows:

"You are instructed that a person accused of a crime shall, at his request, and not otherwise, be deemed a competent witness, and may testify in the case. The defendant in this case has so testified and you are instructed that you should consider his testimony as you would that of any other witness and the credit to be given his testimony is left solely with you."

Defendant excepts to the refusal of the Court to give his instruction No. three, reading as follows:

"Under the law no jury should convict a defendant of a crime upon mere suspicion, however strong, or simply because there may be a preponderance of the evidence in the case against him, or simply because there is strong reason to suspect he is guilty. But

before the jury can lawfully convict they must be convinced by the evidence in the case, beyond a reasonable doubt that he is guilty, and unless you so believe you should acquit the defendant Anderson."

The foregoing matters and things are herewith presented to the Court as defendant's proposed bill of exceptions herein, and the defendant requests that the same may be settled and made a matter of record in this cause.

GEO. D. SCHOFIELD,
Attorney for Defendant.

Due and timely service of the foregoing proposed bill of exceptions accepted at Nome, Alaska, by receipt of a true copy thereof, on this 25th day of January, 1906.

HENRY M. HOYT,
United States Attorney.
By W. N. LANDERS,
Deputy U. S. Atty.

Order Settling Bill of Exceptions.

The foregoing bill of exceptions having been prepared, served, filed, settled and allowed within the time provided by law and orders of this Court, is now found correct in all respects, and is hereby approved, allowed and settled and made a part of the records herein.

Done in open court at Nome, Alaska, this 13th day of March, 1906.

ALFRED S. MOORE,
District Judge.

[Endorsed]: No. 426-Crim. In the United States District Court for the District of Alaska, Second Division. United States vs. E. W. Anderson. Bill of Exceptions Proposed by Defendant. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome, Jan. 25, 1906. Jno. H. Dunn, Clerk. By ————, Deputy. Refiled in the Office of the Clerk of the Distr. Court of Alaska, Second Division, at Nome. Mar. 13, 1906. Jno. H. Dunn, Clerk. By ————, Deputy. Geo. D. Schofield, Atty. for Deft.

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

E. W. ANDERSON,
Defendant.

Assignment of Errors.

Comes now the defendant in the above-entitled action and assigns the following errors as having been made by the Court in the trial and in the pro-

ceedings in the above-entitled action, upon which the defendant intends to, and does, rely upon as his writ of error in the above-entitled action.

1.

The Court erred in denying the defendant's challenge to the juror Ralph T. Reber, as appears from the testimony of the said juror in his voir dire examination as shown in the bill of exceptions, as follows: "(Questioning by GEO. D. SCHOFIELD, Esq.)

Q. Mr. Reber, did you ever hear what purported to be the facts of this case? A. Yes, sir.

Q. Ever read any articles in the newspapers regarding the case? A. Yes, sir.

Q. From what you read or heard, did you form or express any opinion as to the guilt or innocence of the defendant?

A. Yes, sir, and then I discussed the case with the reporter after the article was written, that is when I came back from the outside.

Q. Is that opinion such as would require evidence to remove? A. Yes, it would.

Q. Is it an opinion of a mere fleeting nature or one fixed in its nature? A. Pretty well fixed.

Q. Require some considerable evidence to remove it, would it? A. Yes, sir.

Q. Do you believe that with the opinion that you now have, you would make a fair and impartial trial juror, knowing the facts, upon this defendant's case?

A. I do not.

Mr. SCHOFIELD.—Challenge the juror on the ground of bias under the statute.

Whereupon counsel for the Government resisted said challenge and further interrogated said witness as follows:

(Questioning by Mr. GRIGSBY.)

Q. Your opinion relates to the guilt or innocence of this defendant?

A. Not of this particular defendant.

Q. You have no opinion as to the guilt or innocence of this particular defendant?

A. Not as to this particular defendant.

Q. Then is there any reason why you should not be a fair and impartial juror in the case of this particular defendant?

A. I am pretty well acquainted with the circumstances.

Q. Have you any conception of the case as far as this defendant's connection with it is concerned?

A. Not individually.

Q. And the opinion you have simply goes to the fact of whether or not there was a riot out there?

A. Yes, sir.

Q. Now, as far as this defendant's guilt or innocence is concerned, you could try this case wholly on the evidence, Mr. Reber?

A. I would try to do so, but I don't know.

Q. Any other reason why you would not be a fair juror—have an opinion in the case as to this defendant's guilt or innocence?

A. No; not individually as to this particular defendant.

Q. Well, the fact that an indictment has been returned against him does not raise any presumption in your mind against him, does it? A. No, sir.

Mr. GRIGSBY.—Well, it seems to me simply a—

Mr. SCHOFIELD.—There is a doubt there, your Honor.

Mr. GRIGSBY.—If the Court please, the juror says he would not be a fair and impartial juror, but the Court is the judge of that; now, he has no opinion whatever as to the guilt or innocence of this particular defendant, simply an opinion as to part of the circumstances of the case.

Mr. SCHOFIELD.—Why, he said he did not think he would make a fair juror, he said he did not think so.

Mr. GRIGSBY.—He is not the judge of his qualification.

Mr. SCHOFIELD.—We insist on our challenge.

(By Mr. GRIGSBY.)

Q. You have no bias or prejudice against this defendant? A. No, I have not.

The COURT.—I think he is a qualified juror. If we would disqualify all those who happen to have some knowledge in regard to these cases coming into the criminal court, you wouldn't get qualified jurors; we would get a set of ignorant jurors who did not have intelligence enough to read the papers.

Mr. SCHOFIELD.—May I be permitted to ask one or two further questions of the juror?

The COURT.—No, I think his qualifications are good unless you know of some fact—

Mr. SCHOFIELD.—I ask permission to examine him further—the answer—

The COURT.—No; he answered explicitly. What is it you wish to ask? Then I will determine whether I shall permit it.

Mr. SCHOFIELD.—I desire to examine the juror further with reference to this opinion he has.

Mr. REAGAN.—He has answered fully as to his opinion.

The COURT.—He has answered pretty well. (To Mr. Reber.) You may be sworn at the proper time.

Whereupon counsel for the defendant then and there objected to the ruling of the Court, and exception was then and there allowed. Whereupon

counsel for defendant peremptorily excused the said juror."

2.

The Court erred in denying defendant's challenge to the juror W. A. Sternberg, as appears from the testimony of the said juror in his voir dire examination as show in the bill of exceptions, as follows:

"(Questioning by Mr. SCHOFIELD.)

Q. You heard the statement of this case?

A. Yes, sir.

Q. What is your business? A. Mining.

Q. Where have you been mining?

A. Nome River.

Q. How far up the river?

A. About seven miles from here.

Q. Mining for yourself? A. Yes, sir.

Q. Are you employer of labor?

A. Have not been this year; have been in years past.

Q. Is this your first year in Alaska?

A. No, sir.

Q. How long have you been mining in the district? A. About four years, five years.

Q. During that time, at any time, have you worked for wages in the district?

A. No, sir—oh, I have, yes, while I was manager of the Cold Storage Company, under wages—at the same time I was mining for myself.

Q. Are you still connected with the Cold Storage Company? A. No, sir.

Q. Do you believe, Mr. Sternberg, that labor has the same right to associate together for its own protection as capital has a right to associate?

A. Indeed, if they don't interfere with the rights of others.

Q. Would the fact that the defendant here was a member of the Federal Labor Union of Nome bias or prejudice you any way against him?

A. Not unless that union interferes with others' rights.

Q. Well, suppose the union did interfere with others' rights, would that bias you against this defendant?

A. If he was a member of the union and participated in this unlawful manner, that I consider unlawful, it would.

Q. Would you require positive testimony convincing your mind, then, beyond a reasonable doubt, that he had participated; would you return a verdict of guilty? A. No.

Q. You would not require that class of testimony?

A. I would have to know that he had participated. If he did not, I have no bias against him.

Q. You would require him to show that?

A. I would be governed by the evidence; if the evidence showed that he had not participated I would not be biased against him.

Q. Then, as I understand you, you would require the defendant to show that he had not participated?

A. No, sir, I think I am broad enough to believe that the burden of proof is on the Government to show that he did participate.

Q. Would you permit the required presumption that the defendant was innocent to follow you all through the trial until he was proven guilty of the charge by the evidence in the case beyond a reasonable doubt? A. Yes, sir.

Q. Would you do that knowing him to be a member of that particular union if he should appear—if he is charged jointly with one John Christensen, a member of that union, and that Christensen has been found guilty?

Mr. REAGAN.—I object to the question. He doesn't know whether he is a member or not.

Mr. SCHOFIELD.—It will develop.

The COURT.—Objection overruled.

(Question read.)

A. The Christensen matter is disposed of, and would not enter into my calculations at all.

Q. Now, would the fact that an indictment had been returned against this defendant bias you in any way?

A. Well, it would lead me to think that there was evidence before the Grand Jury that he was one of the participants in the riot.

Q. And that opinion would follow you through the trial, would it?

A. Well, I would want it made clear that he wasn't there.

Q. And you would require him to do that by testimony convincing your mind that he was not there?

A. Yes.

Mr. SCHOFIELD.—Challenge the juror on the grounds of actual and implied bias.

Whereupon George B. Grigsby, of counsel for the United States, resisted said challenge, and questioned the juror as follows:

Q. Now, would you follow the instructions of the Court as to the law? A. I certainly would.

A. And if the Court should instruct you that the defendant was entitled to the benefit of the presumption of innocence until his guilt is established beyond a reasonable doubt, you would give him that presumption, would you not? A. I would.

Q. And you would try the case wholly on the evidence admitted at this trial, would you, and wouldn't allow the fact that the defendant had been indicted to weigh against him? A. Not in the least.

Whereupon the Court overruled said challenge, and an exception was then and there allowed.

Whereupon counsel for defendant then and there peremptorily excused said juror."

3.

The Court erred in denying defendant's challenge to the juror, P. A. Peterson, upon the ground of actual, as well as implied, bias, to which denial the defendant in the presence of the jury and before their retirement, duly excepted and said exception was allowed.

4.

The Court erred in denying the motion of the defendant made after the prosecution had rested case to dismiss the said action and to instruct the jury impaneled therein to return a verdict of not guilty, which motion was as follows, to wit:

"Mr. SCHOFIELD.—The defendant, E. W. Anderson, your Honor, at this time moves a dismissal and that the jury be instructed to return a verdict of not guilty, upon the following grounds:

1. The indictment does not substantially conform to the requirements of chapter VII, title two of the Criminal Code of Alaska in this, to wit: It is endorsed a "true bill," and such endorsement signed by the foreman of the grand jury as such:

2. The indictment does not contain a statement of facts stating the offense in ordinary and concise language, without repetition and in such manner as

to enable a person of common understanding to know what is intended;

3. It is not direct and certain as regards the crime charged, in that it alleges that the offense was committed by an assault and was committed by threats to assault;

4. It does not contain the particular circumstances of the crime charged, and such circumstances are necessary to constitute a complete crime;

5. The facts stated in the indictment do not constitute a crime, said facts therein pleaded being legal conclusions only, and said indictment contains no allegation of an unlawful assemblage of persons, or that an assemblage congregated lawfully and thereafter became an unlawful assemblage;

6. The indictment charges an assault and an attempt to commit an assault without the necessary allegations as to what was done to carry the assault into effect or the mode or manner of attempting the assault.

Whereupon the Court overruled said objection, and the defendant then and there excepted to said ruling, and an exception was then and there allowed."

5.

The Court erred in giving the following instruction in the course of its charge to the jury, which said instruction was in words and figures as follows, to wit:

"Now, I instruct you that the use of force and violence, unaccompanied by threats to use force and violence, if made and committed by three or more persons acting together and without authority of law, will constitute the crime of riot under the section quoted."

To the giving of which instruction the defendant, before the jury retired to consider of their verdict, and in the presence of the jury, duly excepted and said exception was then and there duly allowed."

6.

The Court erred in giving the following instruction in the course of its charge to the jury, as follows, to wit:

"The allegations of the indictment which the Government must prove in order to warrant you that you, in rendering a verdict of guilty against the defendant, are:

1. That within three years next preceding September 30, 1905, and within the District of Alaska, the defendant, E. Anderson, was acting together with any two or more of the other defendants named or unnamed, and without authority of law;

2. That so acting together with any two or more of said defendants and without authority of law, the defendant, time and place above mentioned, made an assault with force and violence or aided and abetted by his presence, or by his words and gesture an

assault to be made with force and violence upon any one or more of the following-named persons, to wit: John Rigby, Fred Thorpe, Horace Bell, O. L. Green, Scott Gurgess and John Bustram.

3. If all the evidence adduced at the trial convinces you beyond a reasonable doubt of the truth of these allegations, it will then be your duty to render a verdict of guilty. On the other hand, if the evidence fails to so convince you, your duty will be to return a verdict of not guilty."

To the giving of which instruction the defendant, in the presence of the jury, and before they had retired to consider of their verdict, duly excpted, and an exception was then and there allowed.

7.

The Court erred in giving the following instruction, No. 10, in the course of its charge to the jury, which said instruction is in words and figures as follows:

"The defendant to the indictment in this case interposes the plea of not guilty, and in support of the plea has adduced testimony before you for the purpose of proving an alibi. Defendant, by this particular defense, says to you in substance, 'I am not guilty of the offense charged, for the reason that I was not at the place where the alleged crime, if any was committed, at the time it was alleged to have been committed.' As regards the alibi relied upon

by the defendant in this case, I now instruct you that an acquittal of the defendant will be justified by the law if the evidence touching the alibi, after being carefully weighed and tested by you, and having been fairly and impartially considered by you, in connection with all the other evidence in the case shall raise a reasonable doubt of his guilt of the crime charged."

To the giving of which instruction the defendant, in the presence of the jury, and before they had retired to consider of their verdict, duly excepted, and an exception was then and there allowed.

8.

The Court erred in giving the following instruction, No. 12, in the course of its charge to the jury, which said instruction was in words and figures as follows, to wit:

"Gentlemen of the jury: The defendant in this case has seen fit to go upon the stand as a witness in his own behalf.

Now, you are instructed that under the law he is a competent witness, and his testimony is to be weighed and considered in the manner you will weigh and consider the testimony of any other witness, exercising your judgment as reasonable men and keeping in mind these instructions bearing upon the proper manner of treating evidence and giving to it its due and just effect"

To the giving of which instruction the defendant, in the presence of the jury, and before they had retired to deliberate upon their verdict, duly excepted, which exception was then and there allowed.

9.

The Court erred in refusing to give to the jury the following instruction, No 1, requested by the defendant, to wit:

"The defense interposed by defendant Anderson in this case is what is known as alibi; that is, that the defendant was at another place at the time of the alleged commission of the crime charged, and the Court now instructs you that such evidence is as proper and legitimate, if proved, as any other, and all the evidence bearing upon that point should be carefully considered by the jury, and if, in view of all the evidence, the jury has any reasonable doubt as to whether he was in some other place or places than at the place indicated in the indictment when the crime was committed, should you find a crime was committed, you should give the defendant Anderson the benefit of that doubt, and find him not guilty.

Where the defense is an alibi, as in this case, the jury are instructed that the defendant is not required to prove that defense beyond a reasonable doubt to entitle him to an acquittal.

It is sufficient if the evidence upon that point

raises a reasonable doubt of his presence at the time and place of the commission of the crime charged, and if upon the evidence there is in the minds of the jury a reasonable doubt as to whether or not the defendant Anderson was present at the time and place mentioned in the indictment, you should give him the benefit of the doubt, and find him not guilty."

To which refusal of the Court the defendant, in the presence of the jury, and before they retired to consider their verdict, duly excepted, which exception was then and there allowed.

10.

The Court erred in refusing to give the jury the following instruction, No. 2, as requested by the defendant, as follows, to wit:

"You are instructed that a person accused of a crime shall, at his request, and not otherwise, be deemed a competent witness, and may testify in the case. The defendant in this case has so testified, and you are instructed that you should consider his testimony as you would that of any other witness, and the credit to be given his testimony is left solely with you."

To which refusal of the Court the defendant, in the presence of the jury, and before their retirement, duly excepted, and said exception was allowed.

11.

The Court erred in refusing to give the jury the following instruction No. 3, as requested by the defendant, as follows, to wit:

"Under the law no jury should convict a defendant of a crime upon mere suspicion, however strong, or simply because there may be a preponderance of the evidence in this case against him, or simply because there is strong reason to suspect he is guilty. But before the jury can lawfully convict they must be convinced by the evidence in the case, beyond a reasonable doubt, the he is guilty, and unless you so believe you should acquit the defendant Anderson."

To which refusal of the Court the defendant, in the presence of the jury and before their retirement, duly excepted and said exception was allowed.

12.

The Court erred in entering judgment and imposing sentence upon the defendant on the 23d day of October, A. D. 1905, and before the defendant had been heard upon his motion for a new trial, which had been theretofore duly filed in said cause and before the same had been heard or disposed of by said Court, to which the defendant duly excepted and an exception was allowed.

13.

Error and abuse of discretion committed by the Court in denying the defendant's motion for a new

trial based upon the grounds set forth in said motion, to which ruling of the Court the defendant duly excepted and said exception was allowed.

14.

The Court erred in denying the motion of the defendant to vacate the judgment and sentence pronounced and imposed herein, upon the grounds set forth in said motion, to which ruling of the Court the defendant duly excepted and an exception was allowed.

Wherefore the said E. W. Anderson, plaintiff in error, prays that the judgment of the District Court for the District of Alaska, Second Division, be reversed and that said District Court be directed to grant a new trial in the said cause.

O. D. COCHRAN,
Attorney for Plaintiff in Error.

Rec'd. copy of above July 3, 1906.

GEO. B. GRIGSBY,
Act'g U. S. Atty., J. J. R.

[Endorsed]: No. 426-Crim. No. ———. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. E. W. Anderson, Defendant. Assignment of Errors. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Jul. 3rd, 1906. Jno. H. Dunn, Clerk. By ————, Deputy. O. D. Cochran, Atty. for Plaintiff in Error. McB.

In the District Court, for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. W. ANDERSON,

Defendant.

Bond on Writ of Error.

Know all men by these presents, that we, E. W. Anderson, as principal, and J. S. Macintosh and Barney Gibney, as sureties, are held and firmly bound unto the United States of America, in the sum of two hundred and fifty ($250.00) dollars, for the payment of which well and truly to be made we bind ourselves, our and each of our heirs, executors, administrators and assigns firmly by these presents.

Sealed with our seals and dated this 3d of July, 1906.

Whereas, at a session of the District Court for the District of Alaska, Second Division, in an action between the United States of America as plaintiff, and E. W. Anderson, as defendant, a judgment was, on the 23d day of October, 1905, rendered and entered against the defendant E. W. Johnson, sentencing said defendant to three years imprisonment in the United States Penitentiary at McNiel's Island, in

the State of Washington, and the said defendant having obtained from the said District Court an order allowing a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to review said judgment, and a citation directed to the United States District Attorney for the Second Division of the District of Alaska, is about to be issued, citing and admonishing him to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, State of California.

Now, therefore, the conditions of the above obligation are such that if the defendant E. W. Anderson, shall prosecute his writ of error to effect, and answer all damages and costs not exceeding two hundred and fifty ($250.00) dollars if he fail to make his plea good, then this obligation shall be void; otherwise it shall remain in full force and effect.

E. W. ANDERSON,
By O. D. COCHRAN, His Atty.
Principal.

J. S. MACINTOSH,
BARNEY GIBNEY,
Sureties.

United States of America,
District of Alaska,—ss.

J. S. Macintosh and Barney Gibney, being each duly sworn, deposes and says:

That he is one of the sureties named in the foregoing bond; that he is worth the sum of two hundred and fifty ($250.00) dollars over and above all debts and liabilities and exclusive of property exempt from execution.

J. S. MACINTOSH,
BARNEY GIBNEY.

Subscribed and sworn to before me this 3d day of July, 1906.

[Notarial Seal] O. D. COCHRAN,
Notary Public in and for the District of Alaska.

The foregoing bond was approved this 3d day of July, 1906, at Nome, Alaska.

ALFRED S. MOORE,
Judge of the District Court for the District of Alaska, Second Division.

O. K.—GEO. B. GRIGSBY,
Act'g U. S. Atty.
J. J. R.

[Endorsed]: No. 426-Crim. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. E. W. Anderson, Defendant. Bond on Writ of Error. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. July 3, 1906. Jno. H. Dunn, Clerk. By ————, Deputy. O. D. Cochran, Atty. for Defendant. McB.

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. W. ANDERSON,

Defendant.

Petition for Writ of Error and Order Allowing Same.

E. W. Anderson, defendant in the above-entitled action, feeling himself aggrieved by the verdict of the jury and the judgment entered on the 23rd day of October, 1905, comes now by his attorney, O. D. Cochran, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and to review the said judgment and proceedings.

And further prays that an order be made fixing the amount of security to be given by the defendant in said writ of error.

Dated Nome, Alaska, July 3d, 1906.

O. D. COCHRAN,
Attorney for Defendant.

ORDER.

Now, on this 3d day of July, 1906, it is ordered that said writ of error be allowed as prayed for, the said defendant giving a cost bond of two hundred and fifty ($250.00) dollars.

Done at Nome, Alaska, this 3d day of July, 1906.

ALFRED S. MOORE,

Judge of the District Court, for the District of Alaska, Second Division.

Received copy of above this 3rd July, 1906.

GEO. B. GRIGSBY,

Act'g U. S. Atty.

J. J. R.

[Endorsed]: No. 426-Crim. In the District Court for the District of Alaska, Second Division. United States of America, plaintiff, vs. E. W. Anderson, defendant. Petition for Writ of Error and Order Allowing Same. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Jul. 3rd, 1906. Jno. H. Dunn, Clerk. By ————, Deputy. O. D. Cochran, Atty. for Defendant in Error. McB.

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. W. ANDERSON,

Defendant.

Writ of Error (Copy).

United States of America,—ss.

The President of the United States to the Honorable the Judge of the District Court for the District of Alaska, Second Division, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the said District Court before you between the United States of America, plaintiff, and E. W. Anderson, defendant, a manifest error hath happened to the great damage of the said E. W. Anderson, defendant, as is said and appears by the petition herein.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be given therein, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United

States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, together with this writ, so as to have the same at the said place in court on the 3d day of August, 1906, that the records and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors. what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 3d day of July, 1906.

Attest my hand and the seal of the District Court for the District of Alaska, Second Division, on the date and year last above written.

[Court Seal] JNO. H. DUNN,
Clerk of the District Court for the District of Alaska, Second Division.

Allowed this 3d day of July, 1906.

ALFRED S. MOORE,
Judge of the District Court for the District of Alaska, Second Division.

Service of foregoing writ of error acknowledged July 3, /06, by recipt of copy.

GEO. B. GRIGSBY,
Actg. U. S. Atty.
By JNO. J. REAGAN,
Actg. U. S. Atty.

In the District Court for the District of Alaska, Second Division.

No. 426-Criminal.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. W. ANDERSON,

Defendant.

Clerk's Certificate to Transcript.

I, John H. Dunn, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 107, both inclusive, is a true and exact transcript of the indictment, motion to set aside indictment, minute order Oct. 3, 1905, overruling motion to set aside indictment, demurrer to indictment minute order Oct. 3, 1905, overruling demurrer, minutes of court during trial, instructions to jury by the Court, verdict, motion for new trial, minute order sentence by the Court, judgment, notice of hearing motion to vacate judgment, motion to vacate judgment and sentence, minutes of court overruling motion in arrest of judgment, and extending time to file bill of exceptions, order extending time to file bill of exceptions, stipulation extending time to file bill of exceptions, bill of exceptions, assignment of errors, bond on writ of error, petition for writ of error and order allowing

same, lodged copy writ of error, in the case of the United States of America vs. E. W. Anderson, No. 426-Criminal, this Court, and of the whole thereof as appears from the records and files in my office at Nome, Alaska; and further certify that the original writ of error and the original citation in the above-entitled cause are attached to this transcript.

Cost of transcript, $30.25, paid by O. D. Cochran, attorney for defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 10th day of July, A. D. 1906.

[Seal] JNO. H. DUNN,
Clerk, District Court, Alaska, Second Division.
By Angus McBride,
Deputy.

In the District Court for the District of Alaska. Second Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

E. W. ANDERSON,
Defendant.

Writ of Error (Original).

UNITED STATES OF AMERICA—ss.

The President of the United States to the Honorable, the Judge of the District Court for the District of Alaska, Second Division, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the said District Court before you between the United States of America, plaintiff and E. W. Anderson, defendant, a manifest error hath happened to the great damage of the said E. W. Anderson, defendant, as is said and appears by the petition herein.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be given therein, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, State of California, together with this writ, so as to have the same at the said place in court on the 3d day of August, 1906, that the records and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors,

what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 3d day of July, 1906.

Attest my hand and the seal of the District Court for the District of Alaska, Second Division, on the date and year last above written.

[Seal] JNO. H. DUNN,
Clerk of the District Court for the District of Alaska, Second Division.

Allowed this 3d day of July, 1906.

ALFRED S. MOORE,
Judge of the District Court for the District of Alaska, Second Division.

Service of foregoing writ of error ackg'd July 3, 1906, by receipt of copy.

GEO. B. GRIGSBY,
Actg. U. S. Atty.
By JNO. REAGAN,
Actg. U. S. Atty.

[Endorsed]: No. 426-Crim. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. E. W. Anderson, Defendant. Writ of Error. Filed in the office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Jul. 3, 1906. Jno. H. Dunn, Clerk. By ————, Deputy.

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. W. ANDERSON,

Defendant.

Citation.

United States of America—ss.

The President of the United States, to the United States of America, and to Henry M. Hoyt, United States District Attorney for the District of Alaska, Second Division, Greeting.

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, State of California on the 3d day of August, 1906, pursuant to a writ of error filed in the clerk's office of the District Court for the District of Alaska, Second Division, wherein E. W. Anderson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief justice of the Supreme Court of the

United States of America, this 3d day of July, 1906, and of the independence of the United States the one hundred and thirtieth.

ALFRED S. MOORE,

Judge of the District Court for the District of Alaska, Second Division.

[Seal] Attest: JNO. H. DUNN,

Clerk.

Service of the foregoing citation by receipt of copy therein admitted this 3d day of July, 1906.

GEO. B. GRIGSBY,

Actg. United States District Attorney.

By JNO. REAGAN,

Assistant United States District Attorney.

[Endorsed]: No. 426-Crim. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. E. W. Anderson, Defendant. Citation. Filed in the office of the clerk of the Dist. Court of Alaska, Second Division, at Nome. Jul. 3, 1906. Jno. H. Dunn, Clerk. By ————, Deputy.

[Endorsed]: No. 1386. United States Circuit Court of Appeals for the Ninth Circuit. E. W. Anderson, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court for the District of Alaska, Second Division.

Filed October 24, 1906, nunc pro tunc as of July 21, 1906, pursuant to order of Court entered October 24, 1906.

F. D. MONCKTON,
Clerk.